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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/972,790	10/05/2001	David D. Boyd	BYD 327	4149
23581	7590	12/01/2003	EXAMINER	
KOLISCH HARTWELL, P.C. 520 S.W. YAMHILL STREET SUITE 200 PORTLAND, OR 97204			WEINSTEIN, STEVEN L	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 12/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/972790

Applicant(s)

BOYD ET AL

Examiner

S. WEINSTEIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☒ Responsive to communication(s) filed on 9/8/03
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-25 is/are pending in the application.
- Of the above claim(s) 9, 10, 15-21 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-8, 11-14, 22-25 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 1/25/02 + 2/25/02
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

Applicants' response to the restriction requirement received September 28, 2003 has been fully and carefully considered but has not been found to be convincing. Applicants have urged that a serious burden has not been shown for the restriction and the election requirements. For purposes of the initial requirement, a serious burden on the examiner may be prima facie shown if the examiner shows by appropriate explanation either separate classification, separate status in the art, or a different field of search (MPEP 803). The prima facie showing may be rebutted by appropriate showings or evidence by the applicants. This has not been done. Also, the election of species has been further reviewed and has been found to be proper as well. However, the election of type of data that is Species C or D and their subspecies is hereby withdrawn.

Applicants have elected Group I, species A, and subspecies A5. Accordingly, claims 1-8, 11-14 and 22-25 are drawn to the elected invention and species. Claims 9, 10 and 15-21 are withdrawn from further consideration as being drawn to non-elected inventions and species.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 6, 7, 8, 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Helbling (5,072,660).

Helbling discloses a brewing packet comprising a filter, a brewing ingredient (e.g. coffee) within a cavity and a machine interpretable feature such as a bar code, which includes coded date

regarding the brewing packet. See in this regard, Fig. 2, elements 110, 111; column 3, paragraph 1; and column 11, paragraph 5.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4, and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Helbling (5,072,660) in view of King (5,974,950) further in view of Munekuro (Jp. 2-133711), Mada (Jp. 9-287743), Tanaka (Jp. 6-331148), Akita (Jp 7-293898), Nissin Shokuhin Kaisha (Jp 2000-511708), Millies (DE 29705780), and Hedenberg (5,146,840) further in view of Weber (5,974,949), Illy (4,852,333), Illy (4,555,894), Illy (4,439,623), and Illy (425,694).

Helbling ('660) is relied on as above to teach that applicant is not first to provide a brewing packet with a bar code label which enables a machine to read the bar code and process the brewing packet accordingly. King is relied on as further evidence for providing a brewing packet with a bar code label, albeit for other purposes, whereas Munekuro, Mada, Tanaka, Akita, Nissin Shokuhin Kaisha, Millies and Hedenberg are relied on as further evidence to teach that it was notoriously old to provide food packages with bar code information which information is specific processing information for the specific food so that the food processing apparatus will process the food appropriately. Claims 3 and 4 recite a particular location of the bar code information and a specific filter structure. As evidenced by Weber and the Illy references, it is notoriously conventional to provide a round filter with the filter sheets and a gasket sealing the flanges that define the cavity. To modify the combination and substitute one conventional

brewing packet structure for another conventional brewing packet structure for its art recognized and applicants' intended function is seen to have been obvious. Similarly where on the packet one chooses to print the bar code is seen to have been an obvious matter of choice. In regard to claims 11-14, as noted above, the art taken as a whole teaches that a food package for food processing can include a processing directive (such as time/temperature) or a characteristic of the food (such as a quantity), which, in the latter instances, the apparatus can adjust, processing conditions accordingly. The particular processing variables one chooses to provide in the form of a bar code is seen to have been an obvious matter of choice.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weber ('949), Illy ('333), Illy ('894), Illy ('603) and Illy ('694).

Coffee brewing packets with the recited structure are notoriously conventional as evidenced by Weber and the Illy references. The number of servings, which is a direct and obvious function of the quantity of coffee and the size of the packet, is seen to have been an obvious matter of choice.

Claims 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 22 above, and further in view of Helbling ('660), King ('950), Munekuro (Jp '711), Mada (Jp '743), Tanaka (Jp '148), Akita (Jp '898), Nissin Shokuhin Kaisha (Jp '708), Millies (DE '780), and Hedenberg ('840) are relied on as above to teach it would have been obvious to provide the packet with a bar code label.

The remainder of the references cited on the USPTO form are cited as pertinent art.

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Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is (703) 308-0650. The examiner can generally be reached on Monday-Friday from 7:00 a.m. to 3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone number for the organization where this application is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

S. Weinstein/dh  
November 13, 2003

  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
11/24/03